

In the Matter of Merchant Mariner's Document No. Z-217067-D4
Issued to: JAMES ROBERT DELK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES ROBERT DELK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 9 June, 1952, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-217067-D4 issued to James Robert Delk upon finding him guilty of misconduct based upon a specification alleging in substance that while the holder of the document above described, on or about 28 April, 1952, he wrongfully failed to appear as a witness in a Coast Guard proceeding as directed in a subpoena dated 24 April, 1952.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statements and was sworn to testify respecting the circumstances attending issuance of the subpoena to Appellant, and the events which followed.

In defense, Appellant testified in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order suspending Appellant's Merchant Mariner's Document No. Z-217067-D4 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of one month.

From that order, this appeal has been taken, and it is urged that (1) Appellant had valid reasons for not appearing at the hearing in question, because (a) he was ill; and (b) he was having domestic difficulties; (2) an outright suspension for one month works hardship upon him; and because of his prior record (in 1943)

the suspension should have been probationary.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 24 April, 1952, and at all times subsequent thereto up to and including the present, James Robert Delk was the possessor of Merchant Mariner's Document No. Z-217067-D4. On that date, Appellant was interviewed by LTJG Werthman with reference to an assault which occurred on the SS MORMACKITE.

As a result of information obtained from Appellant by LTJG Werthman, the Investigating Officer issued and served upon Appellant a subpoena requiring Appellant's presence at the Coast Guard offices in New York City at 3:30 P.M. on 28 April, 1952.

Appellant did not appear at the hearing for which he had been subpoenaed; nor did he make any effort to advise the Investigating Officer of a reason why he would or could not be present at said hearing.

The state of Appellant's health and domestic problems is mentioned for the first time in these proceedings; and then only by Appellant's uncorroborated testimony.

Coast Guard records disclose that instead of one prior incident involving disciplinary action against Appellant, there are three such incidents. On two occasions he was given an admonition only; - but it is noted one of these transgressions occurred on the MORMACKITE for absence without leave in February, 1952.

OPINION

The Examiner's opinion in this case (R.10-12) seems to cover the situation very satisfactorily; and I adopt it as my own. I adhere to the views expressed in my decision of Appeal No. 557; as they seem to be peculiarly applicable to this case.

CONCLUSION

I find no reason urged on this appeal which justifies my interference with the Examiner's action.

ORDER

The Order of the Examiner dated New York, New York, on 9 June, 1952, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 22nd day of July, 1952.